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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/757,852	01/14/2004	Michael S. Holgate	121E-0164U	4606
37953	7590	09/08/2004	EXAMINER	
MILLER, EVERMAN & BERNARD, PLLC 4701 HEDGEMORE DR., SUITE 2500 CHARLOTTE, NC 28209			CEGIELNIK, URSZULA M	
		ART UNIT	PAPER NUMBER	
		3712		

DATE MAILED: 09/08/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/757,852	HOLGATE, MICHAEL S.	
	Examiner	Art Unit	
	Urszula M Cegielnik	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on ____.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-20 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-12, 19, and 20 is/are rejected.
- 7) Claim(s) 13-18 is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)	4) <input type="checkbox"/> Interview Summary (PTO-413)
2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)	Paper No(s)/Mail Date. _____.
3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date <u>01/14/04</u> .	5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)
	6) <input type="checkbox"/> Other: _____.

DETAILED ACTION

Priority

Applicant appears to be claiming priority to a U.S. Design Patent application. However, the Applicant has not provided the number for the design patent application.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by World Intellectual Property Organization Publication No. WO 98/03239, hereinafter WO '239.

WO '239 discloses a flying disc comprising a flight deck section (20); a rim (30) connected to said flight deck section (20); and at least one contoured feature (28) positioned within said flight deck section (20); the at least one contoured feature (28) defines a cavity within the flight deck section (see Figure 6, for example).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-11, 19, and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Clark in view of Morgan.

Clark discloses a flying disc comprising a flight deck section (20); a rim (13) connected to the flight deck section (20), and at least one contoured feature (28) positioned within the flight deck section (20); the at least one contoured feature (28) defines a cavity (e.g. a recess) within the flight deck section (20);

Clark does not disclose the contoured feature protruding beneath a plane and the cavity extending beneath a plane defined by the flight deck section, the claimed ranges of size of the cavity, and means for creating a Coanda effect.

Morgan teaches a throwable device that has a plurality of contoured features used for gripping (see the Figures). The contoured feature protrudes beneath a plane (as shown by reference numeral M) and the cavity extends beneath a plane (as shown by reference numeral L). Furthermore, the contoured features also create a Coanda effect since upon throwing the device, a particular curve or break may be achieved (col. 1, lines 40-46).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the contoured features as taught by Morgan, since such a modification would provide maximum control and accuracy of a throwable device.

With regard to the claimed ranges of size of the cavity, Applicant has not provided any criticality with respect to the shape and size of contoured features in the disclosure (see Specification, at page 11, lines 8-10). In light of the above, it would have been obvious to one having ordinary skill in the art at the time the invention was made to provide the claimed ranges of size of the cavity, since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum of workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Allowable Subject Matter

Claims 13-18 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Urszula M. Cegielnik whose telephone number is 703-306-5806. The examiner can normally be reached on Monday through Friday, from 5:30AM - 2:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris H. Banks can be reached on 703-308-1745. **The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306 for both regular and After Final communications.**

Art Unit: 3712

Urszula M. Cegielnik
Assistant Examiner
Art Unit 3712



DERRIS H. BANKS
SUPERVISORY PATENT EXAMINER
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